IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3110 OF 1992

Raghunath Hari Nalawade
since deceased through his
heirs and L.Rs. Smt. Sunanda
Raghunath Nalawade & Ors. ..Petitioners

versus

Devidas Lokumal Ahuja & Ors. ..Respondents

Ms. Anjali Helekar for the Petitioners.

Mr. N. N. Gawankar for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 6TH OCTOBER, 2006

ORAL ORDER :

1. Heard Counsel for the Petitioners and the Respondents.

2. Petitioners are the tenants and the Respondents are the landlords. The matter is under the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947. The suit came to be filed by the Respondents against the petitioners before the Civil Judge, Junior Division, Ratnagiri, vide Regular Civil Suit No. 141 of 1986 on the ground of

bonafide occupation. That suit was dismissed. Landlords preferred Appeal before the Additional District Judge, Ratnagiri, vide Civil Appeal No. 56 of 1990. That appeal was allowed. Suit of the Plaintiffs was decreed and the defendants were directed to deliver possession within three months from the date of the order. It is necessary to note here that the suit was filed in the year 1986. The order of the dismissal of the suit was on 16.6.1990 and the order of the Appellate Court is dated 4.7.1992.

3. According to the petitioners the landlords are not entitled for a decree for possession on the ground of bonafide occupation on the ground that the tenants have been living in the premises since long, they have no other house of their own in Ratnagiri. Need of the landlords is not bonafide. They purchased the property fully knowing well that it was occupied by the tenants, and, lastly, according to the petitioners during the pendency of this petition, they filed application firstly before the Municipal Council for permission to carry out repairs, the Municipal Council granted such permission. Similar such application was filed in

this court and this court also granted permission to the petitioners - tenants to carry out repairs and pursuant to that order, the tenants have paid Rs.80,000/- for repairs of the walls of the house, latrine, bathroom roof of the house, and therefore in view of the improvements made, the decree for eviction cannot be passed and order of the District Judge, is liable to be quashed and set aside.

4. I am not at all convinced by any of the submissions made by the counsel for the Petitioners. It is true that when the Respondents purchased this house they were knowing that the house was being occupied by the tenants but there is no legal bar for a man to purchase the tenanted property. Secondly, it has come in the evidence that there were joint families of the respondents and there are 16 members in their family. Apart from this house, they have no house of their own in Ratnagiri at that time and when this is an admitted fact then the appellate court was fully justified in decreeing the suit of the plaintiffs.

5. While this petition was pending, an affidavit came to be filed by the Respondents -

Landlords and it is accompanied by certain documents and extracts of property issued by Gram Panchayat. Out of the 8 Petitioners, every one is shown to be in possession of separate household property, e.g.

Sunil Raghunath Nalawade
Residing at Hari Nivas, Patrakar Society, Sai Nagar, Kuvarbav, Ratnagiri.

Prakash Raghunath Nalawade
Residing at Trimurti Apartment, Kuvarbav, Ratnagiri

Anil Raghunath Nalawade
Residing at Chavan Chawl, Watool, Taluka Rajapur, Dist: Ratnagiri.

Dilip Raghunath Nalawade
Residing at 1/150, Rajya Shasakiya Society, Kuvarbav, Ratnagiri

Milind Raghunath Nalawade
Residing at 1/133, Rajya Shasakiya Society, Kuvarbav, Ratnagiri.

Mrs. Amita Ashok Sawant
Residing at and Post Nachane, Ratnagiri.

Shashikant Raghunath Nalawade
Residing at Plot No. B-304, Room No. 25, Kandivali (E), Mumbai.

Sandhya Rajnikant Surve
Residing at and Post Kuve, Tal: Lanja, Dist: Ratnagiri

6. Counsel for the Petitioners, upon instructions of her client petitioner No.1 Smt.

Sunanda Raghunath Nalawade widow of original tenant Raghunath, contended that property of Sunanda and Dilip is one and the same, then house occupied by Prakash was taken for temporary purpose for a period of six months for giving treatment to the mother in law, and, so far as Shashikant is concerned, according to her he is a step son living in Kandivali from the beginning. Counsel for the Respondent referring to Exhibit 'A' of respondent's affidavit was successful in showing that Patrakar Society, Ratnagiri, where Sunil Nalawade is residing is totally different from Rajya Shasakiya Society, Ratnagiri, where Dilip is residing. Gram Panchayat extracts supports this contention.

7. It is therefore clear that the joint family of the respondents comprising and consisting of 16 members require the house for their bonafide occupation. That was the need. There is no legal bar. As already stated by me if the person is purchasing the tenanted property such a person can succeed only if he can show that his need is bonafide. There is nothing on record to show that demand of the respondents from the petitioners to vacate the house is malafide. The respondents have

succeeded to make out a case strongly in their favour.

8. Mere fact that the petitioners - tenants have been residing there since long, is no ground to refuse relief to the landlords. Similarly, the fact that the petitioners - tenants have spent some amount for carrying out repairs is also no ground to refuse the relief because the repairs were adding to the comforts of the tenants and they have been enjoying the property since long. There is no merit in this petition. The same is dismissed. Rule is discharged. Ad interim relief, if any, stands vacated. No order as to costs.

(D.G. DESHPANDE, J.)